



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
HUMAN RESOURCES MANAGEMENT DIVISION-LAS VEGAS
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LAS VEGAS, NV 89119-7528

August 21, 2013

OFFICE OF
ADMINISTRATION AND
RESOURCES MANAGEMENT-CINCINNATI

Cheryl A. Hughes

RE: Freedom of Information Act Request No. EPA-HQ-2013-002840

Dear Ms. Hughes:

This letter is in response to your Freedom of Information Act (FOIA) request dated January 16, 2013, concerning two engineering positions (GS12/13 - #LVOARDE-2011-0090) that you applied for with the U.S. Environmental Protection Agency. As part of your request, you stated that "I decided to request documents related to each candidate that applied and was selected for the above mentioned positions." You then went on to specifically request "the following documents, resume, application, announcement, rating of each candidate, and any other pertinent document related to these positions" be provided.

As you are aware from applying for employment with the Agency, the EPA uses an electronic/automated recruitment system, EZ Hire. The resumes and individual applicant qualification sheets (compiled by Human Resources) of all the applicants for vacancy announcement numbers GS12/13 - #LVOARDE-2011-0090 are maintained in an EPA Privacy Act system of records, EPA-56 (EZ Hire). Also included in that system of records for the aforementioned vacancy announcements are documents such as the applicants' transcripts, "applicant listing reports", "ineligible applicant reports", and "certificates of eligibles". Furthermore, EZ Hire generates "canned" notices; these notices are automatically sent to an applicant-supplied email address every time there is a change in the applicant's status - e.g., an application is received; the applicant is found to be qualified or ineligible; the applicant's resume is referred to the selecting official; notification that the applicant was not selected for the position, etc. These notices, as well as other ad hoc messages sent to applicants via EZ Hire, are all associated with the names of the applicants. While copies of those individual documents are not retained, the EZ Hire system does generate "applicant job tracking history" summary sheets. It is noted, however, that the EZ Hire system does not capture race and gender data as part of the recruitment case files associated with the vacancy announcements for which you've requested information.

Under the Privacy Act, 5 U.S.C. 552(a), information pertaining to the identity and qualifications of all **unsuccessful** applicants for the aforementioned positions cannot be provided without their written consent. To act otherwise would violate the protections provided under the Privacy Act. Therefore, the resumes, transcripts, applications/qualification statements, and "applicant job tracking history" summary sheets for all unsuccessful candidates are being withheld in total.

However, since you were an applicant to the aforementioned positions, we can provide information pertaining to your application for employment, despite that information being contained in a Privacy Act

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system of records. Therefore, we have included un-redacted copies of your resume, transcript, and "applicant job tracking history" summary sheets, as well as the subject vacancy announcement(s). Furthermore, we have provided a redacted copy of your application/qualification statement. The redactions to your application/qualification statement are based on 5 U.S.C. 552 (b)(2), Exemption 2 of the FOIA.

FOIA Exemption 2 protects records that are related solely to the internal personnel rules and practices of an agency (i.e., records relating to issues of employee relations and human resources which implicate conditions of employment in the federal government, such as hiring, firing, work rules, etc.). This exemption covers information that is internal in nature, for which there is no genuine or significant public interest. As such, information contained in the enclosed documents was redacted to avoid disclosing the point value assigned both to your and the successful candidate's responses to the online questionnaire. Furthermore, Exemption 2 has been relied upon to redact the contact information of the successful candidate's professional references.

Under Office of Personnel Management (OPM) regulations at 5 C.F.R. Part 293, Subpart C, Section 293.311, certain information pertaining to **federal employees** is considered public information, regardless if it is otherwise maintained in a Privacy Act system of records. That "public information" encompasses, among other things, employment and education data related to the qualifications for federal employment or promotion. As the successful candidate for the aforementioned vacancy announcement(s) is a federal employee, we have provided redacted copies of the resume, transcript, and application/qualification statement for that individual, in addition to un-redacted copies of the "applicant job tracking history" summary sheets.

We have also provided redacted copies of the "applicant listing reports", "ineligible applicant reports", and "certificate of eligibles" for both vacancy announcements. Un-redacted information pertaining to you and redacted information pertaining to the successful candidate are included in those documents.

It is noted that there are twelve exceptions to the Privacy Act which permit disclosure without the consent of the individual. One of those exceptions pertains to disclosures that **are required** by the FOIA under a written FOIA request. However, when the FOIA does not require a disclosure, but merely permits disclosure at an Agency's discretion, the disclosure prohibition of the Privacy Act is applicable and discretionary release is prohibited.

Under 5 U.S.C. 552 (b)(6), Exemption 6 of the FOIA, Personal Privacy, personal information may be protected from disclosure. Exemption 6 permits the withholding of all information about individuals "... the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Under Exemption 6, the information at issue does not have to be of a highly sensitive or intimate nature. The privacy issue at stake is an individual's reasonable expectation of privacy and control over the dissemination of personal information about him or herself. That privacy interest also includes the right to be free from any secondary effects of disclosure, such as embarrassment or unwanted intrusion, even if the information itself is not inherently harmful.

In applying Exemption 6, it is necessary to conduct a balancing test between the public's interest in the requested information and the privacy rights of all the applicants, including those whose resumes and qualification statements were forwarded to the selecting official for vacancy announcement(s) GS12/13 - #LVOARDE-2011-0090. The public interest pertains to whether the disclosure of that information sheds any light on the operations or activities of the government, i.e., the interest of the general public in

“knowing what its Government is doing”. It is noted that the EPA’s regulations prohibit the discretionary disclosure of Exemption 6 information.

Because only one individual was selected to fill the aforementioned position(s), no public interest is served by releasing either the documents that have been identified above as being withheld in total or non-redacted versions of the redacted documents that are being provided. Conversely, there is a strong privacy interest in the contents of the applicants’ resumes and related qualifications sheets, including those individuals’ identities. That is why certain documents are being withheld in total under Exemption 6, and the identities of the referred candidates have been redacted from the documents being released, save for the identity of the successful candidate.

Under Exemption 5 of the FOIA, Deliberative Process Privilege, information which is pre-decisional and deliberative in nature is also subject to withholding. The purpose of the deliberative process privilege is to protect the quality of the Agency’s decision-making process, to encourage candid and frank discussions among Agency officials, and to avoid premature disclosure(s) which could mislead the public. As noted, the Agency made only one final selection for the aforementioned vacancies. Therefore, the resumes, transcripts, and qualification sheets of all the applicants, including those of the individuals who were referred to the selecting official, save for the selectee, are also being withheld in total under Exemption 5.

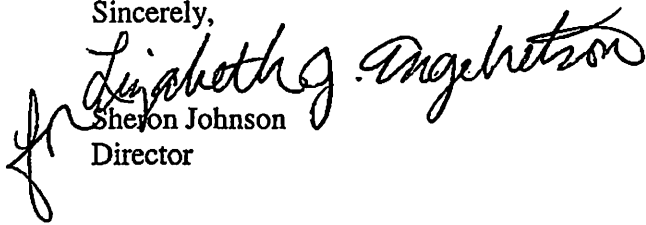
In summary, un-redacted records responsive to your FOIA request are provided as an enclosure to this letter, i.e., your resume, transcript, and the documents automatically generated by EZ Hire associated with your application status, as well as the vacancy announcement(s). In addition, a copy of your application/qualification statement is included with redactions to the associated points, in accordance with Exempt 2. Furthermore, the following documents, which have been redacted to withhold all information not otherwise required to be released under Exemption 6 of the FOIA, are also being provided, i.e., applicant listing reports, ineligible applicant reports, certificates of eligibles, and the resume, transcript, application/qualification statement, and automated application status notification summary sheets associated with the successful candidate.

Under the FOIA, you have the right to appeal this decision to the National Freedom of Information Officer. The mailing address to file an appeal is: United States Environmental Protection Agency, Office of Environmental Information, Records, Privacy and FOI Branch (2822T), 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460. If you file an appeal and use a delivery service other than the USPS, the address for courier or hand delivery is: National Freedom of Information Act Officer, United States Environmental Protection Agency, 1301 Constitution Avenue, NW, Room 6416 West, Washington, D.C. 20004. An appeal may also be filed by email to hq.foia@epa.gov.

Regardless, your appeal must be in writing and received within 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30-day limit. Your appeal should reference EPA-HQ-2013-002840. Finally, if you file the appeal by US mail or use a commercial delivery service, include an annotation on the envelope stating “Freedom of Information Act Appeal.”

If you have any questions concerning the documentation which has been provided, please contact Lizabeth Engebretson at (702) 798-2432. Please provide your FOIA request number in all communications.

Sincerely,


Lizabeth Engebretson
Sheron Johnson
Director

Enclosures:

1. Vacancy announcement
2. Requester's Resume, Transcript, and Status Notification Summaries w/o Redactions
3. Requester's Application/Qualification Statement with Redactions
4. Successful Candidate's Resume, Transcript, Application/Qualification Statement, and Status Notification Summaries with Redactions
5. Applicant Listing Reports with Redactions
6. Ineligible Applicant Reports with Redactions
7. Certificates of Eligibles with Redactions